Supreme Court, U.S.
FILED
NOV 19 1999
OFFICE OF THE CLERK

No. 99-798

In The

Supreme Court of the United States

PRISCILLA M. LIPPINCOTT ADAMS,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

BRIEF OF AMERICAN FRIENDS SERVICE COMMITTEE AS AMICUS CURIAE IN SUPPORT OF PETITIONER

ARLIN M. ADAMS*
**Counsel of Record*
NANCY WINKELMAN
BRUCE P. MERENSTEIN
SCHNADER HARRISON SEGAL & LEWIS LLP
1600 Market Street, Suite 3600
Philadelphia, PA 19103
(215) 751-2000
Attorneys for Amicus Curiae American Friends Service Committee

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

STATEMENT OF INTEREST OF AMICUS CURIAE ... 1

STATEMENT OF THE CASE 6

SUMMARY OF THE ARGUMENT 6

ARGUMENT 8

I. THE IRS'S DENIAL OF A DISCRETIONARY WAIVER OF PENALTIES FOR RELIGIOUS-BASED FAILURE TO FILE RETURNS OR TO PAY INCOME TAXES IMPAIRS THE FREE EXERCISE OF RELIGION 8

II. IMPOSITION OF PENALTIES FOR RELIGIOUS-BASED NONCOMPLIANCE WITH THE TAX LAWS VIOLATES THE RELIGIOUS FREEDOM RESTORATION ACT, AS IT IS NOT THE LEAST RESTRICTIVE MEANS OF ACCOMPLISHING A COMPELLING GOVERNMENTAL INTEREST IN TAX COLLECTION 12

CONCLUSION 16

TABLE OF AUTHORITIES

Page

CASES

American Friends Serv. Comm. Corp. v. Thornburgh, 961 F.2d 1405 (9th Cir. 1991) 13

American Friends Serv. Comm. v. United States, 368 F. Supp. 1176 (E.D. Pa. 1973), *rev'd on other grounds*, 419 U.S. 7 (1974) (per curiam) 3, 14-15

Cheek v. United States, 498 U.S. 192 (1991) 10

Employment Div. v. Smith, 494 U.S. 872 (1990) 7, 8, 9, 12, 13

Fran Corp. v. United States, 164 F.3d 814 (2d Cir. 1999) 10

Slodov v. United States, 436 U.S. 238 (1978) 9, 15

United States v. Boyle, 469 U.S. 241 (1985) 9, 11

United States v. Lee, 455 U.S. 252 (1982) 13, 14

United States v. Philadelphia Yearly Meeting of the Religious Soc'y of Friends, 753 F. Supp. 1300 (E.D. Pa. 1990) 10, 13

United States v. Pomponio, 429 U.S. 10 (1976) (per curiam) 9

CONSTITUTION

U.S. Const. amend. I. 3, 7, 11

STATUTES

18 U.S.C. § 3571 5

26 U.S.C. § 3402 .....5, 6

TABLE OF AUTHORITIES – Continued

Page

26 U.S.C. § 3403 5

26 U.S.C. § 6651 ..... 9, 11

26 U.S.C. § 6656 ..... 5, 9

26 U.S.C. § 6671 5

26 U.S.C. § 6672 ..... 5, 9, 10

26 U.S.C. § 7202 ..... 5, 9, 10

26 U.S.C. § 7421(a) 3

42 U.S.C. §§ 2000bb *et seq.* 7-8, 12, 13, 16

REGULATIONS

26 C.F.R. § 301.6651-1 ..... 7, 9

26 C.F.R. § 301.6656-1 7

OTHER AUTHORITIES

Roland H. Bainton, *Here I Stand: A Life of Martin Luther* (1978) 10

Howard H. Brinton, *Friends for 300 Years* (2d prtg. 1964) 2

Peter Brock, *The Quaker Peace Testimony: 1660 to 1914* (1990) 2

Stanley Hauerwas, *The Peaceable Kingdom: A Primer in Christian Ethics* (1983) 10

Internal Revenue Manual (CCH) § 120.1 (1998) 10

Internal Revenue Manual (CCH) § 5172.12 (1989) 10

TABLE OF AUTHORITIES – Continued

Page

John T. Noonan, Jr., *The Lustre of Our Country: The American Experience of Religious Freedom* (1998)..... 2

Religious Freedom Peace Tax Fund Act, H.R. 2660, 105th Cong. (1998) 15

S. Rep. No. 103-111 (1993) 12

D. Elton Trueblood, *The People Called Quakers* (1966) 2

BRIEF OF AMERICAN FRIENDS SERVICE COMMITTEE AS AMICUS CURIAE IN SUPPORT OF PETITIONER

This brief of the American Friends Service Committee is filed with the consent of the parties.[1] The letters expressing consent have been filed with the Clerk of Court.

STATEMENT OF INTEREST OF AMICUS CURIAE

Amicus curiae American Friends Service Committee ("AFSC") is a Quaker organization, whose staff and volunteers work in this country and throughout the world to provide humanitarian aid and for social justice and peace. AFSC has an acute interest in this case, as a Quaker organization with a long history of peace advocacy and as the employer of a number of Quakers engaged in "peace testimony" through war tax refusal. The Quaker peace testimony consists of opposition to war and the promotion of nonviolent means for resolving conflicts, *see* Pet. App. A38-39, A43, and is a fundamental aspect of the Quaker faith and of AFSC's mission, *see id.* A42-43.

Objection to taxes used for military purposes is a longstanding method for Quakers to express their opposition to war and violence. As early as 1670, shortly after

[1] This brief was not authored in whole or in part by counsel for either party, and no monetary contribution was made in support of the preparation or submission of this brief by any person or entity other than *amicus* and its counsel.

the founding of the Religious Society of Friends (or Quakers), some Quakers in England objected to the voluntary payment of general taxes that were used, in part, to fund England's war with the Dutch. *See* Peter Brock, *The Quaker Peace Testimony: 1660 to 1914*, at 185 (1990). This war tax resistance was (and remains) only one component of Quakers' strict adherence to the peace testimony, even in the face of punishment or persecution. In this country, as early as the beginning of the 1700s, some Pennsylvania Quakers refused to pay taxes to support war preparations. Although Quakers disagreed over the propriety of refusing to pay taxes, war tax refusal continued to spread and grow in the colonies until the time of the American Revolution. *See id.* at 186-90.

By the time of AFSC's founding in 1917, war tax refusal was a well-established means for many Quakers to fulfill their peace testimony. AFSC itself has its roots in the Quaker peace testimony, as it was founded during World War I to provide conscientious objectors with an opportunity to assist civilian victims of the war. *See* Howard H. Brinton, *Friends for 300 Years* 172 (2d prtg. 1964).[2] The organization has continued to work for peace, through education and activism, over the past eight decades. AFSC has frequently been recognized for its unwavering commitment to peace and nonviolence. *See* D. Elton Trueblood, *The People Called Quakers* 257 (1966).

---

[2] In fact, Quakers were one of the few denominations specifically included in conscientious-objection legislation passed by Congress in 1917. *See* John T. Noonan, Jr., *The Lustre of Our Country: The American Experience of Religious Freedom* 222 (1998).

AFSC's peace mission is driven by the belief that conflicts can be resolved through nonviolent means and by the guiding principle that all people are worthy of dignity and respect.

On the basis of these principles, AFSC considered a policy on war tax refusal as early as 1963. In late 1967, AFSC formally approved a plan to challenge its obligation to deduct (and remit to the federal government) taxes from the wages of employees who objected to the use of their tax dollars for war and war preparation.[3] AFSC's longstanding commitment to accommodating its employees' religious consciences while fulfilling its legal obligations under the federal tax system is evidenced by this challenge to the tax withholding method, in *American Friends Service Committee v. United States*. That challenge led to a federal district court holding that "the withholding method of collecting the federal income taxes of [two AFSC employees] violates their First Amendment rights to the free exercise of their religion." 368 F. Supp. 1176, 1184 (E.D. Pa. 1973), *rev'd on other grounds*, 419 U.S. 7 (1974) (per curiam). Although this Court reversed the district court's final order as contrary to the Anti-Injunction Act, 26 U.S.C. § 7421(a), it did not pass on AFSC's or its employees' free exercise argument.

Ten years later, AFSC affirmed once again its policy of honoring employees' requests that it not voluntarily

---

[3] In the early 1970s, AFSC chose not to adopt a corporate policy of tax refusal, but reaffirmed its commitment to assisting employees whose consciences dictated that they not voluntarily pay federal taxes that funded war preparations.

make war-related payments to the IRS from taxes withheld from wages. In January 1996, AFSC adopted its current policy with regard to war tax refusers.

The current policy requires openness in all dealings with the IRS, that neither the employee/tax refuser nor AFSC profit from the tax refusal, and that a portion of tax refusers' withholdings that equal the percentage of the federal budget that is not used for military purposes be submitted to the IRS, with the remainder placed in escrow. The policy provides that AFSC is to notify the IRS of the amounts placed in the escrow accounts and that these funds, with interest, are to be paid to the IRS when the tax refuser has assurance that such funds will not be used for military purposes. *Amicus* AFSC is not itself a religious tax objector. Rather, as a matter of religious conviction, the organization supports its employees' exercise of their religious consciences, particularly when those actions spring from the same principles on which AFSC was founded, and which it continues to serve.

The current AFSC policy represents the organization's best effort to reconcile its commitment to further its employees' expression of religious conscience while meeting its legal obligations as an employer under the federal tax system. Recent reaffirmation of this policy followed extensive discussion and debate among the organization's board and members, and was based on the belief that the current policy accommodates AFSC employees' peace testimony, while ensuring that neither these employees nor AFSC benefits in any way from a religious-based refusal to pay federal taxes.

Although AFSC receives no pecuniary or material benefit from its accommodation of employees' tax refusal, it is nonetheless subject to a number of severe penalties under the Internal Revenue Code for its actions, as are the employees themselves who engage in tax refusal. Under I.R.C. §§ 3402(a)-3403, AFSC is required to withhold a portion of its employees' wages for federal income taxes and is liable for payment of this withheld amount to the IRS.

AFSC's escrowing of a portion of the amount withheld from employee/tax refusers potentially subjects it to civil penalties under I.R.C. §§ 6656 and 6672. Section 6656 provides for a penalty of as much as 15 percent of the amount not deposited with the government "unless it is shown that such failure is due to reasonable cause and not due to willful neglect." I.R.C. § 6656(a), (b)(1) (1994). Section 6672 imposes a penalty equal to the full amount of taxes underpaid by an employer if such employer "willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof." *Id.* § 6672(a). This penalty can even be applied to "responsible" individual officers and employees of AFSC. *See id.* § 6671(b).

Willful failure to collect or pay over taxes also can lead to felony prosecution and, upon conviction, a fine of up to $500,000 and five years' imprisonment. *See id.* § 7202; 18 U.S.C. § 3571(c)(3). As discussed below, IRS regulations, as well as the statutes cited above, allow for discretionary waivers of each of these civil penalties, and prosecutorial discretion ensures that not all technical violators of § 7202 will be subjected to criminal sanctions.

AFSC has an interest, anchored in its peace mission and its Quaker roots, in ensuring that its employees can fulfill their peace testimony without putting the organization or its board members at risk of harsh financial or criminal sanctions. The Third Circuit's decision in this case leaves AFSC – which is headquartered in Philadelphia – even more vulnerable to the penalties outlined above and jeopardizes its ability to fulfill its historic peace mission. By granting Petitioner's petition for a writ of *certiorari* and holding that the imposition of penalties or fines against a religious-based war tax refuser violates either the First Amendment's Free Exercise Clause or the Religious Freedom Restoration Act, or both, this Court can ensure that AFSC and similar religious organizations are able to continue working toward the longstanding Quaker goals of peace and nonviolence, without fear of unjust and unjustified penalties.

STATEMENT OF THE CASE

Amicus adopts the statement of the case in the petition for a writ of *certiorari*.

SUMMARY OF THE ARGUMENT

Employers such as *amicus* AFSC are required by I.R.C. § 3402 to withhold federal income taxes from their employees' wages. Failure to withhold and forward to the IRS the appropriate portion of wages subjects an employer to fines and other penalties. Similarly, an individual taxpayer who fails to pay the required federal

income tax or to file a tax return is subject to financial and criminal penalties. However, in the case of both individual taxpayers and employers, these fines and penalties may be waived or Respondent can exercise discretion in not pursuing these sanctions. *See* 26 C.F.R. §§ 301.6651-1(c), 301.6656-1(b) (1999). Petitioner's present petition does not challenge the government's authority to collect from her the income taxes that she owes, through a levy or other means permitted by law. Nor does she contest the government's authority to collect statutory interest on her unpaid tax obligations. What she disputes, under the Free Exercise Clause and the Religious Freedom Restoration Act, is the government's ability to impose punitive sanctions on her, in the form of a discretionary penalty, for exercising her deeply-held religious convictions by not voluntarily complying with a tax system that supports war preparation.

In *Employment Division v. Smith*, this Court reiterated the longstanding requirement under the Free Exercise Clause that individualized exemptions from laws of general applicability – such as the tax laws – be available to religious objectors to the same extent as such exemptions are offered to those unable to comply with these laws for non-religious reasons. *See* 494 U.S. 872, 884 (1990). The failure of Respondent to grant a discretionary waiver of tax penalties in the present case, in which the Petitioner's noncompliance is based entirely on the exercise of a fundamental religious belief, constitutes a violation of the Free Exercise Clause.

Moreover, the Religious Freedom Restoration Act prohibits the federal government from substantially

burdening a person's exercise of religion unless the government proves that it must do so to further a compelling interest and that it is furthering this interest through the means that are least restrictive of the person's exercise of religion. In this case, the Tax Court found that the payment of federal income taxes that fund military activities substantially burdens Petitioner's exercise of religion. Pet. App. A34. Therefore, to apply the wage withholding laws permissibly to Petitioner (or similarly situated religious objectors), the government must prove that it has a compelling interest in enforcing this collection method against Petitioner through the imposition of fines or other sanctions, and that this method of enforcement is the least restrictive of Petitioner's exercise of religion. In this case, the government offered no evidence in support of its burden and, in fact, there is no indication that the punitive sanctions of the Internal Revenue Code will accomplish – or even advance – the government's goal of encouraging voluntary compliance with the federal income tax withholding system.

ARGUMENT

I. THE IRS'S DENIAL OF A DISCRETIONARY WAIVER OF PENALTIES FOR RELIGIOUS-BASED FAILURE TO FILE RETURNS OR TO PAY INCOME TAXES IMPAIRS THE FREE EXERCISE OF RELIGION.

In *Employment Division v. Smith*, this Court reiterated the holding of earlier cases that "where the State has in place a system of individual exemptions, it may not

refuse to extend that system to cases of 'religious hardship' without compelling reason." 494 U.S. at 884. Under the Internal Revenue Code, both individual taxpayers and employers are subject to substantial financial penalties and possible criminal prosecution for failure to pay federal income taxes or to file returns.

Many of these penalties, however, implicitly or explicitly authorize "individual exemptions." Some penalties are limited to cases of "willful" failures to pay taxes. *See, e.g.*, I.R.C. § 6672 (providing for 100% penalty for willful failure to "truthfully account for and pay over" taxes withheld from employees' wages); *id.* § 7202 (providing criminal penalties for same); *see also Slodov v. United States*, 436 U.S. 238, 254 (1978) (holding that "willfulness" under § 6672 requires "personal fault"); *United States v. Pomponio*, 429 U.S. 10, 12 (1976) (per curiam) (holding that "willful" violation under criminal tax law is "a voluntary, intentional violation of a known legal duty" (internal quotation omitted)). For other penalties, explicit exemptions are provided in the statute (and accompanying regulations) for underpayment of taxes or failure to file tax returns due to "reasonable cause" and not "willful neglect." *See, e.g.*, I.R.C. §§ 6651, 6656.

Under IRS regulations and case law, "reasonable cause" has been defined as an inability to pay the required taxes despite the exercise of "ordinary business care and prudence." 26 C.F.R. § 301.6651-1(c) (1999); *see also United States v. Boyle*, 469 U.S. 241, 246 (1985). Reasonable cause is determined on a case-by-case basis. Situations which may constitute "reasonable cause" include death or serious illness in a taxpayer's immediate family or destruction of the taxpayer's residence, *see* Internal

Revenue Manual (CCH) § 5172.12 (1989), § 120.1 (1998), a bona fide dispute over the law's requirements, *see United States v. Philadelphia Yearly Meeting of the Religious Soc'y of Friends*, 753 F. Supp. 1300, 1305 (E.D. Pa. 1990),[4] and even financial difficulty of an employer who failed to remit taxes withheld from employees' wages, *see Fran Corp. v. United States*, 164 F.3d 814, 818-19 (2d Cir. 1999).

The government has stipulated that Petitioner's religious faith prevents her from voluntarily paying federal income taxes that would be used to fund military activities, and that prior to 1997 she was "precluded" from filing tax returns. Pet. App. A37-38.[5] The government has not claimed that Petitioner has not exercised ordinary

---

[4] A bona fide dispute over the law's requirements is also relevant to the issue of willfulness. In *Cheek v. United States*, this Court held that willfulness, which is required for a violation of §§ 6672 or 7202, is not present when a taxpayer acts under "a good-faith belief that he was not violating any of the provisions of the tax laws." 498 U.S. 192, 202 (1991). As discussed *infra* Part II, AFSC maintains a good-faith belief that RFRA requires the IRS to accommodate AFSC employees' religious-based objections to payment of federal income taxes that support military activities. A failure to grant *certiorari* in this case could potentially impair AFSC's ability to rely on that belief, at least within the Third Circuit.

[5] "Those committed to living faithfully do not have to decide constantly whether to be faithful or not. They simply are faithful." Stanley Hauerwas, *The Peaceable Kingdom: A Primer in Christian Ethics* 129 (1983). This insight is perhaps most famously expressed in the words of Martin Luther to his inquisitors at the Diet of Worms in 1521: "[M]y conscience is captive to the Word of God. I cannot and will not recant anything, for to go against conscience is neither right nor safe. . . . Here I stand, I cannot do otherwise." Roland H. Bainton, *Here I Stand: A Life of Martin Luther* 144 (1978).

business care and prudence in determining whether to pay her income taxes voluntarily or to file tax returns. Therefore, in the same way that a family member's death, a natural disaster or financial hardship constitutes reasonable cause not to pay one's taxes voluntarily or to file a timely return, Petitioner's *inability* to pay taxes that fund military activities without violating her deeply-felt religious beliefs constitutes reasonable cause. *Cf. Boyle*, 469 U.S. at 248 n.6 ("The principle underlying the IRS regulations and practices [is] that a taxpayer should not be penalized for circumstances beyond his control . . . ."); *id.* at 253 (Brennan, J., joined by Marshall, Powell & O'Connor, JJ., concurring) (noting that imposition of the "harsh penalty" of I.R.C. § 6651 might not be appropriate if the taxpayer was "unable" to meet the statute's standard of ordinary business care and prudence). The failure of the IRS to waive the penalties in this situation constitutes an abridgement of Petitioner's free exercise of religion in violation of the First Amendment.

Amicus AFSC urges this Court to rectify Respondent's Free Exercise violation by granting the petition for a writ of *certiorari* and holding that religious-based reasonable cause for failure to voluntarily file an income tax return or to pay estimated tax must be given the same treatment as non-religious reasons for failure to comply. By clarifying this constitutional standard in the income-tax context, the Court will allow *amicus* to continue its mission of working for peace, without violating its employees' religious consciences or subjecting *amicus* itself or its leaders to harsh civil and criminal penalties.

II. IMPOSITION OF PENALTIES FOR RELIGIOUS-BASED NONCOMPLIANCE WITH THE TAX LAWS VIOLATES THE RELIGIOUS FREEDOM RESTORATION ACT, AS IT IS NOT THE LEAST RESTRICTIVE MEANS OF ACCOMPLISHING A COMPELLING GOVERNMENTAL INTEREST IN TAX COLLECTION.

The Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. §§ 2000bb *et seq.*, was enacted in response to this Court's decision in *Employment Division v. Smith*. *See* S. Rep. No. 103-111, at 2 (1993). *Amicus* AFSC strongly supported the effort to pass RFRA in order to restore a proper balance between government flexibility and religious freedom. Congress's intent in passing RFRA was to ensure that individuals' exercise of religion was not substantially burdened by government, whether the burden arose from the direct targeting of religion (or a particular religion) or from laws of general applicability that incidentally burdened the exercise of religion. *See id.* at 8-9; 42 U.S.C. § 2000bb-1(a) (1994).

The statute includes an exception, however, which allows government to substantially burden the exercise of religion if it "demonstrates" that doing so furthers a compelling governmental interest and there is no less restrictive means of furthering that interest. *See id.* § 2000bb-1(b). Moreover, the statute expressly defines the term "demonstrates" as placing on the government "the burdens of going forward with the evidence and of persuasion" regarding the existence of a compelling interest that cannot be served through less restrictive means. *Id.* § 2000bb-2(3).

Between the time of the *Smith* decision and the passage of RFRA, a number of courts had rejected claims of Quaker organizations that objected on religious grounds to obligatory participation in tax collection or other federal programs that conflicted with Quaker religious principles. *See, e.g., American Friends Serv. Comm. Corp. v. Thornburgh*, 961 F.2d 1405, 1407-08 (9th Cir. 1991); *Philadelphia Yearly Meeting*, 753 F. Supp. at 1302-03. These courts based their rulings on the *Smith* decision, which "dramatically altered the manner in which [courts] must evaluate free exercise complaints like that of AFSC." *AFSC v. Thornburgh*, 961 F.2d at 1407. However, RFRA was enacted specifically to address these types of claims, in order to ensure that burdens on the free exercise of religion occur only where the government has proven by evidence both that it has a compelling interest and that there is no less restrictive means to further that interest.

Petitioner has stipulated that the government has a compelling interest in collecting federal income taxes, Pet. App. A48, a stipulation with which *amicus* AFSC agrees. However, the government has offered no evidence (much less "demonstrate[d]") that the assessment of penalties, either on individual taxpayers such as Petitioner or on employers such as *amicus*, for failure to pay taxes or to file tax returns voluntarily is the least restrictive means of accomplishing the compelling need for tax collection.[6]

---

[6] The requirement under RFRA that the government use the least restrictive means to further its compelling interest distinguishes cases such as this one from pre-RFRA cases such as *United States v. Lee*, 455 U.S. 252 (1982). Although the Court in *Lee* held that accommodating a religious tax-objector would unduly interfere with fulfillment of the government's

Following passage of RFRA, the district court's conclusion in the case that AFSC originally pressed more than twenty-five years ago is once again true:

> We believe that the government has failed to establish that its interest in the use of the withholding method of collecting taxes is so great and compelling that it outweighs the religious interests which the plaintiffs seek to protect in this case. The additional cost of collection, if any, is a small price to pay when compared with the possible frustration of the religious practice of bearing witness to one's conscience which practice has sought the aegis of the First Amendment in the unique context of this case.
>
> . . . .
>
> Because we hold that the means of collecting plaintiffs' taxes by withholding them at the source restricts the free exercise of their religion by foreclosing a means by which they may bear witness to their opposition to the participation in war in any form which opposition is a fundamental part of their religious teaching as Quakers, the AFSC is likewise exempt from withholding [the military-related portion] of the taxes of plaintiffs . . . .

---

compelling interest in tax collection, *see id.* at 259, the Court did not consider whether there was a less restrictive means of accomplishing this goal. Moreover, Congress had already provided accommodations within the social security tax system similar to those sought by the tax-objector in *Lee*, although these did not apply to his situation. *See id.* at 256. Therefore, there was strong evidence that the system then in place was the least restrictive means of accomplishing the government's compelling interest. *See id.* at 260-61.

American Friends Serv. Comm. v. United States, 368 F. Supp. 1176, 1184-85 (E.D. Pa. 1973), *rev'd on other grounds*, 419 U.S. 7 (1974) (per curiam).

The I.R.C. penalties serve a punitive and deterrent purpose. *See Slodov*, 436 U.S. at 247. They are intended to encourage (or even to force) compliance with the voluntary tax system. *See id.* at 253-54 & n.16. Yet, imposition of the penalties on Petitioner or on AFSC cannot accomplish the IRS's goal of encouraging voluntary compliance. As a matter of faith, there can be no voluntary compliance. Instead, the penalties simply punish Petitioner and similarly-situated objectors for following the dictates of their fundamental religious beliefs. On the other hand, less restrictive means clearly exist, including the creation of a system for payment of taxes that comports with the objector's religious beliefs, *see, e.g.*, Religious Freedom Peace Tax Fund Act, H.R. 2660, 105th Cong. (1998), or collection of taxes from the objector through a levy on a non-objecting third party creditor (such as a bank), without the imposition of punitive penalties.

For over three centuries, Quakers have advocated for peace through, *inter alia*, the refusal to pay taxes in support of war or war preparations. For more than 35 years, AFSC has struggled with the difficulty of adhering to the tax laws of the United States while supporting its employees' deeply-felt religious need to witness for peace, and to refrain from supporting military force, through partial noncompliance with the federal tax laws. Punishing Quakers who follow in the footsteps of their predecessors, or penalizing the AFSC for attempting to fulfill its mission of advocating for peace does not serve any compelling interest of the government. Nor did

Respondent show at trial that a total refusal to accommodate objectors is the least restrictive means of accomplishing the government's legitimate goal of tax collection. Therefore, use of these penalties under the present circumstances violates RFRA's command that the federal government not substantially burden an individual's exercise of religion unless the government demonstrates that there is no less restrictive means of accomplishing a compelling governmental interest.

To correct the lower courts' failure to enforce RFRA according to its terms, the petition of Priscilla Lippincott Adams for a writ of *certiorari* should be granted.

CONCLUSION

For the foregoing reasons, *amicus curiae* American Friends Service Committee respectfully requests that this Court grant the petition of Priscilla Lippincott Adams for a writ of *certiorari*, and reverse the judgment of the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

ARLIN M. ADAMS*
*Counsel of Record
NANCY WINKELMAN
BRUCE P. MERENSTEIN
SCHNADER HARRISON SEGAL & LEWIS LLP
1600 Market Street, Suite 3600
Philadelphia, PA 19103
(215) 751-2000
Attorneys for Amicus Curiae American Friends Service Committee

Dated: November 19, 1999.